

May 10, 1999

Federal Communications Commission  
Commissioner's Secretary  
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Office of the Secretary  
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Washington, D.C. 20554

By Disc:  
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Room 20223  
Washington, D.C. 20554

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<http://www.fcc.gov/e-file/ecfs.html>

RE: Proposed Comments in the Matter of Docket No. 99-25  
Creation of a Low RM-9208 Power Radio Service RM-9242

To the FCC:

I am an attorney located in Portland, Oregon. I have served as counsel to various groups who are interested in establishing micro-radio stations. I also serve on the board of directors of KBOO, 90.7 F.M., a community radio station in Portland, Oregon.

Of note, I serve as counsel to a local group that attends to the needs of the homeless. That group has expressed interest in forming a radio station that will be run and operated by homeless members. Currently homeless persons' interests and needs are not adequately served by the contemporary radio media.

I understand from your proposal that your goals in creating these new class of stations are

to address unmet needs for community-oriented radio  
broadcasting, foster opportunities for new radio  
broadcast ownership, and promote additional diversity  
in radio voices and program services.

Page Two  
Micro-radio Comments

First, I commend you on your promotion of these goals as a giant step towards preserving and promoting democracy. True democracy does not exist without a completely informed citizenry.

Second, I would like to point to another reason why the development of micro-radio could be crucial to the preservation of our society. Micro radio has the potential to serve as an auxiliary emergency communication network. As a former amateur radio operator, I recall that the FCC intended that amateur radio serve as a backup communication network in emergencies in the event of a media breakdown.

Micro-radio, particularly under 100 watt stations, have the advantage of being able to run on an auxiliary power supply independent of the grid. In the event of widespread power failure, as some predict from the Y2K event, thousands of micro-radio stations could serve as a network for emergency communications throughout the country running on their own power supply and broadcasting necessary information relevant to the health and safety of the local community.

With your goals in mind and the potential of micro-radio to serve a multitude of needs, I present the following comments to your proposal:

**1. Low power stations should be entirely or primarily (80%) NON-COMMERCIAL---**

REASON: Only local, non-profit community groups can ensure that Low Power FM (LPFM) will provide different voices and ideas than established radio stations. If one or two large corporations are allowed to own thousands of small stations, in an emergency, those stations may all be dependent on a central broadcasting source and/or power. This would not allow micro-radio to serve as a diverse emergency network or a diverse source of information relevant to the community in which it broadcasts.

In sum, keep micro-radio small, community oriented and away from the control of large centralized interests.

**2. LPFM stations should be locally owned and there should be a limit on how many stations any one entity can own.**

REASON: How would one individual or corporation owning 10 or more stations across the country promote "community broadcasting" and "diversity" of voices?

One station per licensee will permit the maximum number of people to have their voices heard. No individual should be permitted to own more than one LPFM station nationally or locally, and owners of high power FM or AM stations should not be permitted to own LPFM stations, again for the reason of diversity. Restricting ownership to local owners will insure that LPFM stations will represent local community interests, not the interests of national conglomerates.

Page Three  
Micro-radio Comments

**3. The FCC should allow stations to run between 10 and 100 watts and such stations should be licensed as primary stations:**

REASON: The FCC now proposes a two tier system of primary 500-1000 watt stations and secondary 50-100 watt stations. Secondary status means that if a full power or LP 1000 watt station wanted to start broadcasting or even change their service, LP 100 stations would be displaced. Eventually, most LP 100 stations would probably be forced off the air by larger stations and opportunities for diversity and community broadcasting would be lost. Thus, LP 10-100 watt stations should be designated primary stations, because they are the heart and soul of micro-radio, and essential to a working emergency broadcast network. In fact, the FCC might consider funding solar powered sources of power for low powered stations in the event of a sustained power grid breakdown.

As to power levels in general, a single LP-1000 watt station would crowd out a number of potential LP 100 watt stations. By licensing LP 100 watt stations but not LP 1000 stations, up to 6 times more stations could be put on the air, permitting far more local programming and allowing more people to have a voice. LP 100 stations will also be cheaper and easier for non-profits to establish and run. The bottom line is that the FCC should license 10-100 watt stations but not 500-1000 stations. The smaller stations more readily fulfill

the purpose of the FCC's micro-radio mission.

**4. Radio Interference: LPFM stations should not be required to provide 2nd or 3rd adjacent protection to other stations.**

The Notice of Proposed Rule Making (NPRFM) proposes permitting LPFM stations to broadcast on channels which would not be available to higher power stations, so-called third adjacent and second adjacent channels, which could vastly increase the number of LPFM stations which could be established if the FCC changes the rules.

The FCC developed the rules decades ago to avoid radio interference which restrict how closely two stations can be on the radio dial. Under current rules, if a station is at 104.1, another station within a certain geographical distance cannot be on the same channel, 104.3 (first adjacent channel), 104.5 (second adjacent channel) or even 104.7 (third adjacent channel). Massive technological advances both in broadcast and receiver technology have made the old FCC rules obsolete.

Applying the 2nd and 3rd adjacent requirements to LPFM, which is favored by the National Association of Broadcasters, would mean that very few, if any, LPFM stations would actually be allowed to operate in dense urban areas. Thus, LPFM stations, especially 10-100 watt, should not be required to provide 2nd and 3rd adjacent protection to other stations.

Page Four  
Micro-radio Comments

**5. Distribution of licenses should be based upon a point system reflecting diversity, localism, and cooperation with other applicants. Licenses should be given for a short term of five years, non-renewable and non-transferable.**

Reason: The FCC expects a large number of groups and individuals to apply for a very limited number of slots. The best method of selection that would provide for optimum diversity and reduce the administrative burden on the FCC is a scheme that allows applicants who find themselves in competition for a slot the opportunity to work out conflicts by cooperation or compromise before resorting to another method. Following this negotiation period, any conflicts that remain could be solved by a weighted lottery system which would give points for diversity, community representation, cooperation with other individuals, etc.

By making the licenses non-renewable, an applicant which loses the lottery will get another chance.

The sale of LPFM stations should be restricted because if there are no restrictions, there will be a speculative rush (scalping) for licenses which will then be trafficked to the highest bidder, defeating the FCC's stated purpose of encouraging diverse voices and more local community representation on the air waves.

**6. Micro-radio stations which were on the air previous to the proposed regulations should not be penalized for their efforts and accomplishment of serving as pioneers for micro-radio.**

Reason: Advancements in civil rights in our society comes at the expense sometimes of a few brave and courageous people who are willing to risk their own life and liberty to push the boundaries of society. The names, Rosa Parks and Martin Luther King come to mind in this context. Similarly, the people who have been broadcasting previously in the micro-radio context should not be penalized for their courage to test the law and encourage the FCC to promote these new regulations. In fact, until the latest decision from Federal Judge

Claudia Wilkins, it appeared from the context of the initial decisions in the Dunifer case, that the FCC was incorrect in its constitutional analysis of micro-radio. Ultimately, Dunifer's case was decided on a theory of exhaustion, not on a constitutional basis.

For these reasons, micro-radio pioneers should be given an equal footing within an application framework.

Page Five  
Micro-radio Comments

In closing, I would like to thank the Federal Communications Commission for these remarkable proposals. I believe that legalizing micro-radio will go a long way towards preserving our ever fragile democracy in a troubled world.

Sincerely,

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cc: KBOO community radio